IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.692/2002

Reserved on. 27.4.2007

Decided on.1.6.2007

M/s Pavilion Resorts Pvt. Ltd. & another **…Petitioners.**

Versus

State of H.P. & another. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1].

For the petitioner : **Mr. Dushyant Dadwal, Advocate**

For the respondent No.1 **Mr. M.S. Chandel, Advocate General with M.A. Khan and Meenakashi Sharma, Dy. As. G.**

For the respondent No.2. **Mr. Neeraj Kumar Sharma, Advocate.**

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner had been served with a show cause notice dated 16.4.2001 under section 211 (1) (a) of the H.P. Municipal Act, 1994 for raising unauthorized construction. The matter was thereafter placed before the House of the Municipal Council on 26.9.2001 (Annexure PG). Mr. Neeraj Kumar Sharma, Advocate appearing on behalf of the Council has submitted that consequently the Executive Officer of the Municipal Council ordered the demolition of the unauthorized structure raised by the petitioner on 16.10.2001. The petitioner approached the Deputy Commissioner against the resolution passed by the Municipal Council, Dalhousie on 20th September, 2001 on 27.01.2001. The Deputy Commissioner dismissed the application preferred under section 263 (1)

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?

(a) and 263 (1) (b) read with section 269 of the H.P. Municipal Act, 1994 on 29.12.2001 (Annexure PN). Thereafter the petitioner also approached the Director (Urban Development) against the resolution dated 20th September, 2001 on 4.10.2001. The Commissioner-cum-Secretary (UD) informed the petitioner on 10.5.2001 that his representation has already been decided by the Government vide letter dated 13.11.2001.

Mr. Dushyant Dadwal, Advocate appearing on behalf of the petitioner has submitted that the order passed by the Deputy Commissioner is not in conformity with law.

Mr. Neeraj Kumar Sharma, Advocate appearing on behalf of the respondent-Council has submitted that the petitioner-company has raised the unauthorized construction without seeking prior permission of the Council under section 203 of the H.P. Municipal Act, 1994. Mr. Sharma has further submitted that the petitioner-company has been served with a notice on 16.4.2001 and ultimately the Council had decided on 20.9.2001 to demolish the unauthorized construction raised by the petitioner which led to the passing of the order dated 6.10.2001.

I have heard the parties and perused the record.

The petitioner had raised the unauthorized construction despite the issuance of notice to him on 1.4.2001. The remedy of appeal has been provided under section 212 of the H.P. Municipal Act, 1994 against the demolition order passed by the Council. The petitioner had chosen a wrong forum for redressal of his grievances. The Deputy Commissioner has also misdirected directed himself by coming to the conclusion that he was competent to hear the appeal. The remedy invoked by the petitioner of approaching the Director (Urban Development), H.P. was also misconceived. The H.P. Municipal Act, 1994 is a complete Code and the petitioner was expected to approach the authorities constituted and

provided under the Act instead of approaching the Deputy Commissioner, Chamba and Director (Urban Development) H.P.

The Hon'ble Supreme Court in ***M.I. Builders Pvt. Ltd. V. Radhey Shyam Sahu*** (1999*) 6* SCC 464 has held that the Court should order demolition of such construction even though builder has invested considerable amount. Their Lordships of the Hon'ble Supreme Court have opined as under:

> **"No consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."**

The upshot of the above discussion is that the petitioner has raised the unauthorized construction despite the issuance of notices. He had also not availed the remedy provided under the H.P. Municipal Act, 1994.

Accordingly there is no merit in the petition and the same is dismissed with no order as to costs. Interim order dated 30.5.2002 is vacated.

(Rajiv Sharma), Judge

June 1, 2007
Awasthi